Subject Matter Code: J-01 MS4s/CSOs/Industries Costs

Comment ID: CTR-013-002
Comment Author: County of Los Angeles
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-013 incorporates by reference letter CTR-027

Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following concerns which greatly impact the Lost Angeles County Stormwater Program:

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant costs with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, thus requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA for the following reasons:

The preamble to the Federal stormwater regulations(*2) clearly indicates that it was not the intent of Congress to require municipal permits to require end-of-pipe treatment technology but to implement a comprehensive stormwater management program to reduce the discharge of pollutants from municipal storm sewer systems.

If municipal stormwater discharges are required to comply with the proposed rule, end-of-pipe treatment or zero discharge would be the only alternatives to achieve compliance. This would result in major capital expense to construct the collection and treatment facilities. In addition, this may result in other more significant environmental impacts, such as destruction of wetlands and wildlife habitats.

We recommend that the proposed rule not apply to MS4 discharges. However, if the USEPA should continue to impose the proposed rule to MS4s, the rule should be revised to specifically address compliance issues and resolution to those issues for MS4 discharges that adequately reflect the intent of Congress when it implemented the municipal stormwater program.

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*2) Federal Register, November 16, 1990, Vol. 55, No. 222, Page 48038

Response to: CTR-013-002

See response to CTR-040-004.

Comment ID: CTR-014-002
Comment Author: City of Lakewood
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-014 incorporates by reference letters CTR-013 and CTR-027

Attachments? N
CROSS REFERENCES

Comment: 2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to achieve compliance which would provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-014-002

See response to CTR-040-004.

Comment ID: CTR-024-002
Comment Author: City of Hawthorne
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-024 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: 2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and Fresno Metropolitan Flood Control

District, stormwater discharges being controlled through aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-024-002

See response to CTR-040-004.

Comment ID: CTR-027-002
Comment Author: California SWQTF
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-027 incorporates by reference letters CTR-001, CTR-036 and CTR-040
Attachments? N
CROSS REFERENCES

Comment: 2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to possibly achieve compliance which would only provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant costs with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of pipe treatment would be necessary. Even then, certain criteria, e.g. PAHs, cannot be attained through typical treatment BMPs. In the case of Sacramento, a capital cost of $2.5 billion was required to provide treatment. The annual cost, including operation and maintenance, for such an arrangement was $444 million. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat all stormwater discharges. This is unreasonable, and not consistent with intent of the CWA for the following reasons:

* The preamble to the Federal stormwater regulations (*1) clearly indicates that it was not the intent of Congress to require municipal permits to require end-of-pipe treatment technology, but to implement a comprehensive stormwater management program to reduce the discharge of pollutants from municipal storm sewer systems.

If municipal stormwater discharges are required to comply with the proposed rule, end-of-pipe treatment or zero discharge would be the only alternatives to achieve compliance. Extrapolating the Sacramento cost for end-of-pipe treatment to a population of $22 million (*2) results in an annual cost of $7 billion. In addition to the significant compliance costs, there are other issues that could make such alternatives infeasible.

- Fully developed communities may not have the vacant land available to construct collection and treatment facilities. Acquisition of developed land would be very expensive.

- Going to zero discharge or constructing and operating collection and treatment facilities may result in other more significant environmental impacts, such as destruction of wetlands and wildlife habitats.

- Technologies to treat not only the quantity of stormwater but to reduce toxic pollutants to low concentrations are not currently available.

* As noted in the economic analysis to the proposed rule, EPA estimates that only 3% of the total load of toxic pollutants to fresh waters of the State are from point source discharges, which include municipal stormwater discharges. Since point source discharges contribute a small percentage of the total toxic pollutant load, reducing the toxic pollutants in stormwater would result in only marginal water quality improvements in the waters the proposed criteria are intended to protect. The costs to implement a BMP based program alone to address toxic pollutants, without considering end-of-pipe treatment, are significant and not justified when compared to the marginal water quality benefits to be achieved.

Recommendation: The proposed rule should not apply to MS4 discharges. However, if USEPA should continue to impose the proposed rule to MS4s, the rule should be revised to specifically address an resolve these compliance issues, as they apply to MS4 discharges, in a manner consistent with the intent of Congress when it adopted the requirements of the municipal stormwater program.

(*1) Federal Register, November 16, 1990, Vol. 55, No. 222, page 48038.

(*2) Based on 1990 census data.

Response to: CTR-027-002

See response to CTR-040-004.

Comment ID: CTR-040-034
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: Although EPA goes to great length to label its cost analysis as "conservative" the analysis is anything but conservative:

* It is not conservative to assume that municipal stormwater dischargers can achieve the criteria with no-cost BMPs.

Response to: CTR-040-034

See response to CTR-013-003.

Comment ID: CTR-041-030
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References:
Attachments? N
CROSS REFERENCES

Comment: Although EPA goes to great length to label its cost analysis as "conservative" the analysis is anything but conservative:

* It is not conservative to assume that municipal stormwater dischargers can achieve the criteria with no-cost BMPs.

Response to: CTR-041-030

See response to CTR-013-003.

Comment ID: CTR-044-025
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References:
Attachments? N
CROSS REFERENCES

Comment: Although EPA goes to great length to label its cost analysis as "conservative" the analysis is anything but conservative:

* It is not conservative to assume that municipal stormwater dischargers can achieve the criteria with no-cost BMPs.

Response to: CTR-044-025

See response to CTR-013-003.

Comment ID: CTR-054-029
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References:
Attachments? N
CROSS REFERENCES

Comment: Although EPA goes to great length to label its cost analysis as "conservative" the analysis is anything but conservative:

* It is not conservative to assume that municipal stormwater dischargers can achieve the criteria with no-cost BMPs.

Response to: CTR-054-029

See response to CTR-013-003.

Comment ID: CTR-062-002
Comment Author: City of Downey
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-062 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-062-002

See response to CTR-040-004.

Comment ID: CTR-069-002a
Comment Author: CA Bus Prop Ass & Bldg Ind Ass
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References:
Attachments? N
CROSS REFERENCES E-01j

Comment: Additionally, CBIA and CBPA are concerned with the findings in the "Economic Analysis of the Proposed California Water Quality Toxics Rule." The acknowledgment by EPA in the economic analysis that "the water quality criteria in this rule may also have an indirect effect on sources not permitted under the NPDES program or not subject to numeric water quality-based effluent limits is extremely troublesome. Sources not permitted under the NPDES program include nonpoint sources and wet weather discharges such as runoff from farms and urban areas. The economic analysis continues by stating that "any potential effect on these sources is unknown at this time" and that "the State may ask or require these sources to implement best management practices or participate in a comprehensive watershed management approach. Since the economic analysis only focuses on the costs to point source dischargers and not non-point discharges, CBIA and CBPA believe that the potential economic impact of the proposed rule is greater than identified in the economic analysis.

We thank you for your consideration of these comments.

Response to: CTR-069-002a

EPA did not include benefits or costs of controlling nonpoint sources or storm water dischargers in its estimates of benefits and costs of the CTR. EPA believes that the final rule will not have a direct effect on sources not permitted under the NPDES program (e.g., nonpoint sources) or NPDES sources not typically subject to numeric water quality-based effluent limits (e.g., wet weather discharges). Any potential indirect effect on nonpoint sources and wet weather discharges, such as runoff from farms, urban areas, and abandoned mines, and contaminated sediment, is unknown at this time. Many of the programs developed to control nonpoint sources and wet weather discharges are already in place. Costs due to these programs have already been incurred or will soon be incurred owing to existing federal, State, and local environmental programs.

EPA also acknowledges that nonpoint sources and wet weather discharges are technically difficult to model and evaluate costs because they are intermittent and highly variable. Nonpoint source and wet weather discharges also occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, evaluating agricultural nonpoint source discharges and storm water discharges and their effects on the environment is highly site-specific and data intensive. Until this information is available, it is premature to project that the sources would incur any costs beyond those for which they

are already responsible under the current regulations of the Clean Water Act.

Comment ID: CTR-071-002
Comment Author: City of Rosemead
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-071 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-071-002

See response to CTR-040-004.

Comment ID: CTR-072-002
Comment Author: City of Bell Gardens
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-071 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-072-002

See response to CTR-040-004.

Comment ID: CTR-073-002
Comment Author: City of Paramount
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-073 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-073-002

See response to CTR-040-004.

Comment ID: CTR-074-002

Comment Author: City of San Gabriel
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-074 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

2.The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-074-002

See response to CTR-040-004.

Comment ID: CTR-075-002
Comment Author: City of El Monte
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-075 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program;

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to M84s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District,

stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-075-002

See response to CTR-040-004.

Comment ID: CTR-076-002
Comment Author: City of Cudahy
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-076 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR) , which are of major impact to our stormwater program:

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-076-002

See response to CTR-040-004.

Comment ID: CTR-078-002
Comment Author: City of Maywood
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97

Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-078 incorporates by reference letter CTR-013
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-078-002

See response to CTR-040-004.

Comment ID: CTR-079-002
Comment Author: City of Glendale
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-079 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

2. The application of water quality standards to MS4 stormwater discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require stormwater agencies to incur significant cost with minimal improvement in water quality. Based on studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, stormwater discharges being controlled through an aggressive BMP based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its stormwater discharges. This is unreasonable and is

not consistent with the intent of the CWA.

Response to: CTR-079-002

See response to CTR-040-004.

Comment ID: CTR-087-003
Comment Author: Morrison & Foerster LLP
Document Type: Storm Water District
State of Origin: CA
Represented Org: SCVURPPP
Document Date: 09/24/97
Subject Matter Code: J-01 MS4s/CSOs/Industries Costs
References: Letter CTR-087 incorporates by reference letters CTR-001 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: Finally, even if the Elliot Memo were not incorrect (and, given the plain language of the statute, it clearly is), EPA's position that WQBELs may be applied in municipal stormwater permits requires that it conduct an economic analysis of the proposed rule's potential impact on municipal stormwater dischargers. In this regard, it makes no difference whether WQBELs are expressed as numeric effluent limitations or in the form of BMPS. For if BMPs must be calculated on the basis of the numeric criteria contained in the proposed CTR rather than on section 402(p)(3)(B)(iii)'s maximum extent practicable standard, they are likely to have significant economic consequences -- consequences the Agency has failed to even attempt to analyze in its proposal.

Members of the SCVURPPP look forward to EPA revising its proposal to address the comments contained in this letter and those offered by their fellow municipal stormwater dischargers.

Please contact me at the telephone number listed above if you have any questions concerning the matters covered by this letter or wish to discuss them further.

Response to: CTR-087-003

EPA did not include benefits or costs of controlling nonpoint sources or storm water dischargers in its estimates of benefits and costs of the CTR. EPA believes that the final rule will not have a direct effect on sources not permitted under the NPDES program (e.g., nonpoint sources) or NPDES sources not typically subject to numeric water quality-based effluent limits (e.g., wet weather discharges). Any potential indirect effect on nonpoint sources and wet weather discharges, such as runoff from farms, urban areas, and abandoned mines, and contaminated sediment, is unknown at this time. Many of the programs developed to control nonpoint sources and wet weather discharges are already in place. Costs due to these programs have already been incurred or will soon be incurred owing to existing federal, State, and local environmental programs.

EPA also acknowledges that nonpoint sources and wet weather discharges are technically difficult to model and evaluate costs because they are intermittent and highly variable. Nonpoint source and wet weather discharges also occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or

drought conditions. Thus, evaluating agricultural nonpoint source discharges and storm water discharges and their effects on the environment is highly site-specific and data intensive.

See also response to CTR-040-004.

Subject Matter Code: J-02 RFA - Small Entity Cost

Comment ID: CTR-001-008a
Comment Author: Law Offices of Alan C. Waltner
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org: Almeda Cnty Clean Wtr Pgm
Document Date: 09/22/97
Subject Matter Code: J-02 RFA - Small Entity Cost
References:
Attachments? N
CROSS REFERENCES R

Comment: EPA'S PROPOSAL VIOLATES THE REGULATORY FLEXIBILITY ACT

Several of the member agencies of the ACCWP have populations less than 50,000 (Piedmont, Emeryville, Albany) and will be significantly affected by the proposed rule if it results in the adoption of NELs or WLAs in the permit for their discharges. These "small entities" under the Regulatory Flexibility Act ("RFA") are entitled to both initial and final regulatory flexibility analyses under the RFA.

EPA's finding that a substantial number of small entities will not be significantly affected by the proposed rule is arbitrary and capricious given this demonstrated impact. A substantial number of municipalities less than 50,000 in population are currently covered by NPDES permits for their storm water discharges. In addition, EPA's upcoming Phase II storm water regulations may substantially expand the universe of small municipalities that will be subject to NPDES permits and, through those permits, to the provisions of the CTR.

Neither the ACCWP, the ACCWP's member agencies or, to our knowledge, any other storm water system that will be subject to this rule, was contacted by EPA in advance of the proposed rulemaking and given a reasonable opportunity to participate in the rulemaking as required by 5 U.S.C. section 609(a). In addition, as a "covered agency" under 5 U.S.C. section 609, EPA must process the proposed rule in accordance with the provisions of that section, including the convening of a review panel, but apparently has failed to do so.

Response to: CTR-001-008a

See response to CTR-001-008b, CTR-050-007a, and the preamble to the final rule.

Comment ID: CTRH-001-005a
Comment Author: Alan Waltner
Document Type: Public Hearing
State of Origin: CA
Represented Org: Almeda Cnty Clean Wtr Pgm
Document Date: 09/17/97
Subject Matter Code: J-02 RFA - Small Entity Cost
References:
Attachments? N
CROSS REFERENCES R

Comment: If you go beyond best management practices, you're impliedly eliminating those provisions of the 1995 Basin Plan. I think it would clearly violate the Regulatory Flexibility Act, since you haven't considered the costs of controls.

If, again, our dischargers had to do whatever it took, our members had to do whatever it took -- and in fact, several of our dischargers are small entities under the Regulatory Flexibility Act: the City of Emeryville, the City of Albany, the City of Piedmont.

The NPDES permits small entities and municipalities under 50,000 in number. If they had to do whatever it took to provide the waste allocations without consideration of the economic impact, those entities, because of the practical problems of needing 50 coliseums of storage in the Bay Area and the practical considerations that plague us -- and the only place you could put that is by the bay, where you have a serious problem with requirements under the Endangered Species Act.

To the extent you're standing in the shoes of the state in promulgating these standards, you violate the cost/benefit balances provision of the Porter Cologne Act.

Response to: CTRH-001-005a

See responses to CTR-001-008b, CTR-050-007a, CTR-035-011a, and the preamble to the final rule.

Comment ID: CTRH-001-008b
Comment Author: Doug Harrison
Document Type: Public Hearing
State of Origin: CA
Represented Org: Fresno Met. Flood Control
Document Date: 09/17/97
Subject Matter Code: J-02 RFA - Small Entity Cost
References:
Attachments? N
CROSS REFERENCES R

Comment: Looking at the results of our monitoring and your criteria, we'll have to achieve another 70 to 90 percent reduction in pollutants in order to be in compliance. That means we'd have to increase our storage volume to 20,000 acre feet just to handle average annual runoff we have underway right now.

That's a price tag of $220 million to $400 million to try to stay in compliance with the current criteria if you interpret the rule to apply to us -- 220 million. And then we can't prevent major storm events in our community, storm impacts that cause a discharge, in which case 100 percent of the discharges would exceed -- would be out of compliance, even though we were retaining 100 percent of the average annual rainfall.

We think that raises a problem with the Regulatory Flexibility Act, both in terms of the cost analysis itself and the impact that accrues to small communities, certainly with respect to the executive order. Just in our case alone the $100 million limit is in serious trouble, dealing with compliance with a five-year schedule just in our community with the possibility of $80 million per year of expense. That does not include O & M cost in that system.

Response to: CTRH-001-008b

EPA disagrees with the commenter's cost estimates, because EPA does not believe that additional storage capacity will need to be constructed to comply with the CTR. However, no details of the cost estimate were provided, thus, EPA could not evaluate the estimated cost. See also response to CTR-001-008b, CTR-040-004, and CTR-050-007a.

Comment ID: CTRH-002-004
Comment Author: Chris Compton
Document Type: Public Hearing
State of Origin: CA
Represented Org: County of Orange
Document Date: 09/18/97
Subject Matter Code: J-02 RFA - Small Entity Cost
References:
Attachments? N
CROSS REFERENCES

Comment: Is the economic analysis appropriate?

Most of the municipal stormwater permittees in Orange County are communities of less than 100,000 in population. I might add that most of the permittees in California are small communities.

Based on our monitoring data and studies conducted by others, it is reasonable to assume that stormwater discharges from these small communities would be faced with the same compliance issues as the large and medium municipalities. EPA failed to address this potential impact in its economic analysis of the proposed rule.

Response to: CTRH-002-004

See responses to CTR-001-008b, CTR-050-007a, and the preamble to the final rule.

Subject Matter Code: J-04 End-of-Pipe Treatment v. BMP

Comment ID: CTR-031-007b
Comment Author: Fresno Metro. Flood Ctrl Dist.
Document Type: Flood Ctrl. District
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-04 End-of-Pipe Treatment v. BMP
References: Letter CTR-031 incorporates by reference letter CTR-027
Attachments? N
CROSS REFERENCES F

Comment: C. If the CTR as proposed in the current draft is applied to municipal storm water dischargers as numeric effluent limitations, new end-of -pipe facilities will result. The impact of these facilities on the environment in general, and endangered species in particular, must therefore be specifically reviewed pursuant to the National Environmental Policy Act and Endangered Species Act.

End-of-pipe facilities would be required for municipal storm water dischargers in their attempt to meet the subject criteria. Storm water facilities must be located in the lowest topographic areas, which contain many of our most valuable and already diminished wetland habitats. This readily foreseeable environmental consequence of the CTR, if directly applied to municipal storm water dischargers, should not be ignored.

Response to: CTR-031-007b

With respect to ESA, EPA has completed consultation as required by Section 7 of the ESA. With respect to compliance with NEPA, section 511(c) of the Clean Water Act excludes this rulemaking from the requirements of NEPA. The comment also assumes that stormwater discharges subject to numeric effluent limitations will have to be treated by new end-of-pipe facilities. As explained in the response to Storm Water Economics Comments (Category J, Comment CTR-040-004), EPA believes that implementation of criteria as applied to wet-weather discharges will not require the construction of end-of-pipe facilities.

Comment ID: CTR-042-002
Comment Author: Cal. Dept. of Transportation
Document Type: State Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: J-04 End-of-Pipe Treatment v. BMP
References:
Attachments? Y
CROSS REFERENCES

Comment: 2. If municipal storm water dischargers are required to meet water quality standards, this will result in the need for installation of expensive end-of-pipe treatment.

As explained in Attachment A included with these comments, Caltrans storm water discharges will, in many instances, be unable to comply with the proposed CTR numeric water quality criteria. In fact, as shown in Attachment A, falling rainwater (which acts as a mechanism for atmospheric deposition) cannot comply with the CTR criteria. As graphically illustrated in Figures 11 and 12 of Attachment A, the concentration of pollutants in the falling rainwater is a substantial fraction of the concentration of those pollutants found in storm water runoff. This demonstrates that atmospheric deposition may be a large source of pollutants in storm water.

The conclusion contained in Attachment A further states that if Caltrans is required to comply with the water quality standards proposed in the CTR, it will be forced to install costly end-of-pipe treatment.

Application of the necessary treatment technologies statewide for all of Caltrans facilities and rights-of-way equates to an astronomical cost. These costs were not even considered in EPA's Economic Analysis for the CTR.

Requests:

* Caltrans requests that EPA clarify the language of the CTR Preamble to state that municipal storm water dischargers must only implement BMPs to reduce the discharge of pollutants to the MEP.

* If the Preamble is not adjusted as requested above, EPA must adjust the costs contained in its Economic Analysis to reflect the potential cost to Caltrans and other municipal storm water dischargers that may be required to meet water quality standards by implementing BMPs and/or advanced treatment technologies.

Response to: CTR-042-002

See response to CTR-040-004.

Comment ID: CTR-047-002
Comment Author: City of Santa Fe Springs
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: J-04 End-of-Pipe Treatment v. BMP
References: Letter CTR-047 incorporates by reference letters CTR-013 and CTR-027.
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our storm water program:

2. The application of water quality standards to MS4 storm water discharges would result in end-of-pipe treatment to reasonably achieve compliance and provide limited environmental benefit. Putting aside the issue of whether water quality standards apply to MS4s, the CTR as presently proposed will require storm water agencies to incur significant cost with minimal improvement in water quality. Based on

studies conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District, storm water discharges being controlled through an aggressive BMP-based program could not be certain of achieving the proposed water quality criteria. To achieve the criteria, end-of-pipe treatment would be necessary. It is reasonable to assume that other municipalities throughout California where special studies have not been conducted will not be able to meet the proposed criteria as well, requiring public agencies throughout California to collect and treat its storm-water discharges. This is unreasonable and is not consistent with the intent of the CWA.

Response to: CTR-047-002

See response to CTR-040-004.

Comment ID: CTR-080-002
Comment Author: City of Los Angeles
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-04 End-of-Pipe Treatment v. BMP
References: Letter CTR-080 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: The City of Los Angeles is hereby transmitting its comments regarding the proposed California Toxics Rule (CTR). I would like to begin by stating that the City currently spends an average of $28 million annually on its Stormwater Management Program. The majority of Program activities are guided by the Los Angeles County Municipal Stormwater Permit, which dictates the use of Best Management Practices to control pollutants to the maximum extent practicable. We are primarily concerned with how the CTR may impact the Stormwater Management Program.

* The City is concerned that the application of water quality standards to municipal separate storm sewers, may result in end-of-pipe treatment. There are issues regarding the feasibility and environmental benefits of such treatment.

Response to: CTR-080-002

See response to CTR-040-004.

Comment ID: CTRH-001-042
Comment Author: Kathy Russick
Document Type: Public Hearing
State of Origin: CA
Represented Org: Sacremento Co. Stormwater
Document Date: 09/17/97
Subject Matter Code: J-04 End-of-Pipe Treatment v. BMP
References:
Attachments? N

CROSS REFERENCES

Comment: As Dave Brent of the City of Sacramento mentioned already, we have evaluated the numeric limits proposed in the rule against six years of our stormwater programs' monitoring data. We have identified five constituents that will be a problem -- where we will likely have a problem in meeting the numeric discharge limits: copper, zinc, lead, PAHs and pentachlorophenol. These also show up as problem constituents for other stormwater programs in the state as well.

We evaluated the reductions that we could attain through intense BMP and source control efforts and determined that, if implemented, we still could not reduce the concentration of these constituents enough to meet the numeric limits. And this leads us inevitably to end-of-pipe treatment.

I would like to illustrate for you the obstacles that a stormwater program faces in meeting numeric limits. This past year the Sacramento Stormwater Program conducted an intense effort to evaluate specifically lead, a high-priority stormwater constituent of concern for us as well as EPA.

A major part of our effort was to identify all potential sources of lead to stormwater in Sacramento County. We identified about 50 individual sources of lead. So the next step in our effort was to determine which of these sources of lead we could actually control considering the nature of the sources, the practicality of controlling the sources, and the legal jurisdiction of our respective agencies, et cetera.

Only a portion of the sources that we identified we could address through source control and BMPs within our program. An example of some of those sources that we have no or very limited control over are: soil erosion, the natural soil erosion that just happens, not to do with construction; aircraft fuel emissions -- by the way, aircraft fuel does not come in unleaded form; automobile emissions, which still contain some lead; abrasion of road striping paint; and the abrasion of tires. These are to name a few.

Our program is now in the process of incorporating practical control measures that we did identify for lead into the various implementation elements of our program, particularly our Industrial Management Program, though we realize that we can only get at a portion of the lead sources in our stormwater.

I would like to note that we are initiating a similar source identification/source control effort for copper this year and anticipate similar results as we experienced for lead, that we will be able to address only a portion of the sources of copper in our stormwaters.

We, the Sacramento Stormwater Program, are not just throwing up our hands and giving up on controlling the problem constituents in our area. We are pursuing control measures and implementing BMPs to address those sources that we can address. And we are committed to continuing this effort.

We are implementing ever-escalating BMPs. We are striving toward maximum extent practicable in accordance with the Clean Water Act. But we have limited control over the pollution of our stormwater.

Now, after looking at lead sources in Sacramento, we are again back to end-of-pipe treatment. We're pushed to end-of-pipe treatment.

The price tag that has been estimated for end-of-pipe treatment for Sacramento County is $2 billion. That, amortized over 20 years, is $200 million per year. End-of-pipe treatment for municipal stormwater programs was never the intent of the Clean Water Act.

Plus, what would be achieved overall if we did end-of-pipe treatment in Sacramento County? The County makes up only a fraction of the Sacramento River watershed, and while we would spend $2 billion on end-of-pipe treatment, the majority of the stormwater occurring within the entire watershed would go unchecked.

In conclusion, I emphasize that the target of municipal programs should be maintained as the maximum extent practicable. If this is indeed the intent of the California Toxics Rule, then clarify that in the rule.

I would like to thank you for the opportunity to speak on behalf of Sacramento County today.

Response to: CTRH-001-042

EPA disagrees with the commenter's cost estimate of $2 billion because EPA does not believe that end-of-pipe treatment will be required to comply with the CTR. However, no details of the cost estimate were provided, thus, EPA could not evaluate the estimated cost. See also response to CTR-040-004.

Comment ID: CTRH-001-060b
Comment Author: Ellen Johnck
Document Type: Public Hearing
State of Origin: CA
Represented Org: Bay Planning Coalition
Document Date: 09/17/97
Subject Matter Code: J-04 End-of-Pipe Treatment v. BMP
References:
Attachments? N
CROSS REFERENCES B

Comment: Secondarily and thirdly -- these two are tied together, the whole -- all our members that comply and have to secure the stormwater permits, we have been looking at how much it would cost us to build facilities to do some kind of end-of-pipe treatment to actually meet some of these numeric criteria for stormwater.

We don't think the economic evaluation that EPA has done is valid. Basically, there are a lot of shortcomings to it, and you have already heard today some of the numbers. The actual amount of money needed to build new facilities is way beyond the $86 million estimate that you have indicated in your analysis.

And based on this very serious economic evaluation shortcoming, I am recommending that at least a 30-day time limit be provided so that you can hear from the permit applicants regarding the statement to show you what the costs really are, and we'd like some more time to do that.

Those are essentially the substance of my comments today. Thank you.

Response to: CTRH-001-060b

See response to CTR-040-004.

Comment ID: CTRH-002-002
Comment Author: Chris Compton
Document Type: Public Hearing
State of Origin: CA
Represented Org: County of Orange
Document Date: 09/18/97
Subject Matter Code: J-04 End-of-Pipe Treatment v. BMP
References:
Attachments? N
CROSS REFERENCES

Comment: Are the criteria attainable?

Orange County has developed and implemented a municipal stormwater quality management plan (also known as the Drainage Area Management Plan) which is applicable countywide. The Drainage Area Management Plan identifies a number of BMPs that address the major source categories of urban stormwater pollutants. These BMPs have been reviewed and approved by the respective regional water quality control boards. However, we have conducted a preliminary attainability analysis and have determined that, after considerable cost to fully implement a BMP-based program, it may not achieve compliance with proposed criteria for dissolved metals without regional or national product substitutions.

Although substantial public resources have been committed to implementation of this program, the municipal stormwater discharges in Orange County seem unlikely to attain all of the proposed criteria within the required compliance period. The alternative would be to collect and treat stormwater discharges as described in the Task Force testimony yesterday.

In addition to the capital cost, construction of these facilities would result in the displacement of jobs and housing as well as a loss of habitat. We believe that Congress intended municipal stormwater permits to implement programs to address sources of pollutants, not to provide end-of-pipe treatment to meet the numerical criteria.

Response to: CTRH-002-002

See response to CTR-040-004.

Subject Matter Code: J-05 BMPs Inability to Comply

Comment ID: CTR-040-025
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-05 BMPs Inability to Comply
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: EPA erroneously assumes that municipal stormwater dischargers can comply with the water quality criteria with BMPs and that BMPs do not cost money. Both assumptions are incorrect as evidenced by attainability analyses performed by several municipal stormwater dischargers.

Response to: CTR-040-025

See response to CTR-040-004.

Comment ID: CTR-041-021
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-05 BMPs Inability to Comply
References:
Attachments? N
CROSS REFERENCES

Comment: EPA erroneously assumes that municipal stormwater dischargers can comply with the water quality criteria with BMPs and that BMPs do not cost money. Both assumptions are incorrect as evidenced by attainability analyses performed by several municipal stormwater dischargers.

Response to: CTR-041-021

EPA did not include benefits or costs of controlling nonpoint sources or storm water dischargers in its estimates of benefits and costs of the CTR. EPA believes that the final rule will not have a direct effect on sources not permitted under the NPDES program (e.g., nonpoint sources) or NPDES sources not typically subject to numeric water quality-based effluent limits (e.g., wet weather discharges). Any potential indirect effect on nonpoint sources and wet weather discharges, such as runoff from farms, urban areas, and abandoned mines, and contaminated sediment, is unknown at this time. Many of the programs developed to control nonpoint sources and wet weather discharges are already in place. Costs due to these programs have already been incurred or will soon be incurred owing to existing federal, State, and local environmental programs.

EPA also acknowledges that nonpoint sources and wet weather discharges are technically difficult to model and evaluate costs because they are intermittent and highly variable. Nonpoint source and wet weather discharges also occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, evaluating agricultural nonpoint source discharges and storm water discharges and their effects on the environment is highly site-specific and data intensive.

See also response to CTR-040-004.

Comment ID: CTR-044-016
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: J-05 BMPs Inability to Comply
References:
Attachments? N
CROSS REFERENCES

Comment: EPA erroneously assumes that municipal stormwater dischargers can comply with the water quality criteria with BMPs and that BMPs do not cost money. Both assumptions are incorrect as evidenced by attainability analyses performed by several municipal stormwater dischargers.

Response to: CTR-044-016

See response to CTR-040-004.

Comment ID: CTR-054-020
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-05 BMPs Inability to Comply
References:
Attachments? N
CROSS REFERENCES

Comment: EPA erroneously assumes that municipal stormwater dischargers can comply with the water quality criteria with BMPs and that BMPs do not cost money. Both assumptions are incorrect as evidenced by attainability analyses performed by several municipal stormwater dischargers.

Response to: CTR-054-020

EPA did not include benefits or costs of controlling nonpoint sources or storm water dischargers in its estimates of benefits and costs of the CTR. EPA believes that the final rule will not have a direct effect on sources not permitted under the NPDES program (e.g., nonpoint sources) or NPDES sources not typically subject to numeric water quality-based effluent limits (e.g., wet weather discharges). Any potential indirect effect on nonpoint sources and wet weather discharges, such as runoff from farms, urban areas, and abandoned mines, and contaminated sediment, is unknown at this time. Many of the programs developed to control nonpoint sources and wet weather discharges are already in place. Costs due to these programs have already been incurred or will soon be incurred owing to existing federal, State, and local environmental programs.

EPA also acknowledges that nonpoint sources and wet weather discharges are technically difficult to model and evaluate costs because they are intermittent and highly variable. Nonpoint source and wet weather discharges also occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, evaluating agricultural nonpoint source discharges and storm water discharges and their effects on the environment is highly site-specific and data intensive.

See also response to CTR-001-002.

Comment ID: CTR-096-003b
Comment Author: City of Modesto
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: J-05 BMPs Inability to Comply
References:
Attachments? N
CROSS REFERENCES E-01c01

Comment: Thank you for the opportunity to comment on the proposed California Toxics Rule. The City's comments are related to five main concepts:

3. The cost implications of these numerical standards are estimated to exceed $100 million to the City of Modesto alone, thereby triggering the President's Executive Order 12866 requiring a more detailed and comprehensive cost-benefit assessment of these proposed standards.

Specifically, the City submits the following comments:

E. Under the proposed rule, Best Management Practices (BMPS) are recommended for compliance with the California Toxic Rule. BMPs may include a variety of processes. Each of these processes may have an associated construction and operation cost. For the City of Modesto, due to the design of the wastewater and stormwater collection systems, it may cost between $25 million to $50 million to construct acceptable BMPS. Existing BMPs may not reduce the pollutant level below that listed in the proposed CRT. Therefore, it is our opinion that construction costs presented in the California Toxic Rule are significantly under estimated. Constructed treatment facilities for wastewater and storm water, beyond BMPS, could exceed $1 00 million for Modesto alone. In addition, annual operation and maintenance costs for BMPs and treatment facilities exceed $1,000,000.

In summary, the proposed regulation is significant because it may well impose costs that are greater than $100 million per year on the regulated community, the majority of which are local public agencies. Regardless of the dollar amount, it is likely to adversely affect, in a material way, the economy, the environment, and local governments.

Thank you in advance for consideration of my comments on the CTR.

Response to: CTR-096-003b

With respect to wet-weather compliance with the CTR see response to CTR-040-004. With respect to EPA's compliance with E.O. 12866 see CTRH-002-006a (Category I; Stormwater/Wet Weather Discharges).

Subject Matter Code: J-06 NEPA

Comment ID: CTR-001-009b
Comment Author: Law Offices of Alan C. Waltner
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org: Almeda Cnty Clean Wtr Pgm
Document Date: 09/22/97
Subject Matter Code: J-06 NEPA
References:
Attachments? N
CROSS REFERENCES F

Comment: THE PROPOSAL VIOLATES THE NATIONAL ENVIRONMENTAL POLICY ACT AND ENDANGERED SPECIES ACT, AND WOULD USURP THE ROLE OF CONGRESS AND THE STATE AND REGIONAL BOARDS

Major environmental impacts of controls could also be foreseen if the water quality standards of the proposed CTR were to apply as numeric effluent limitations or wasteload allocations. This would result in the requirement to prepare an EIS in connection with the proposed rule. (*13) In effect, substantial end-of-pipe treatment facilities on the same order of magnitude as existing POTWs in the Bay Area could be necessary.

Given the scale and location of the facilities that would be required, significant wetland, endangered species and other environmental impacts could occur. EPA must fully evaluate these impacts of the proposed rule before the rule is promulgated. (*14)

A more expansive application of the WQS also would usurp the basin planning process to the extent that the regional boards have included textual discussions of how ambient water quality criteria are to be implemented, particularly with respect to MS4s. The San Francisco Basin Plan states generally that WQS are to be addressed by MS4s through escalating BMPs. EPA has not taken action to disapprove the San Francisco Basin Plan and cannot implicitly repeal portions of that plan through inconsistent preamble language in the currently proposed rule.

Congress has already addressed this significant public policy question and the agency cannot shed its Congressional leash and arrogate legislative power. This is particularly true given the massive expenditures of public funds that could be implicated under at least the more expansive view of what EPA has proposed. We elect our representatives in Congress to balance these major questions, such as the matter of whether local funds should be siphoned from schools, police, infrastructure, etc., to fund storm water controls at the scale necessary to meet WQS regardless of cost. Congress has determined in Section 402(p) that MS4s need only adopt controls to reduce pollutants in storm water to the maximum extent practicable, and to effectively prohibit non-storm water discharges to the storm water system, rather than being subjected to infeasible or exorbitantly expensive numeric effluent limitations.(*15)

(*13) To the extent that the CTR will force development of end of-pipe treatment systems, promulgation of the CTR will represent a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act, triggering the requirement to develop an environmental impact statement to support the rule.

(*14) Commenters have been limited in their ability to present specific information on the question of endangered species, wetland and other environmental impacts given the short comment period on the proposal and EPA's refusal to extend that comment period.

(*15) In Sections 402(p)(5) and (6)f Congress also directed that the approach to meeting water quality standards should MEP-level controls on major dischargers fall short would be to study and expand the scope of the program to include additional dischargers. No mention is made of subjecting major MS4s to more stringent controls. In fact, the regulations are expressly required to target stormwater discharges, other than those discharges described in paragraph (2) [major MS4s], to be regulated to protect water quality - 33 U.S.C. section 1342(p)(6) (Emphasis added).

Response to: CTR-001-009b

With respect to compliance with NEPA, section 511(c) of the Clean Water Act excludes this rulemaking from the requirements of NEPA. The comment also assumes that stormwater discharges subject to numeric effluent limitations will have to be treated by new end-of-pipe facilities. As explained in the response to Storm Water Economics Comments (Category J, Comment CTR-040-004), EPA believes that implementation of criteria as applied to wet-weather discharges will not require the construction of end-of-pipe facilities.

The purpose of the CTR is to fill the current gaps in water quality criteria in inland surface waters and enclosed bays and estuaries. Any existing provisions in a State Basin Plan that have been approved by the State and EPA would not be negated by the preamble discussion in the CTR.

Regarding the application of MEP under section 402(p) of the CWA see response to CTR-040-004.

Comment ID: CTRH-001-009a
Comment Author: Doug Harrison
Document Type: Public Hearing
State of Origin: CA
Represented Org: Fresno Met. Flood Control
Document Date: 09/17/97
Subject Matter Code: J-06 NEPA
References:
Attachments? N
CROSS REFERENCES F

Comment: Lastly, it's been fairly well documented by EPA testimony before the Congress and by other state stakeholders' concerns about the end-of-pipe mandate, because the end-of-pipe facilities that must be constructed in effect create substantial damage to the riparian and other waters of the U.S. that are of primary concern to us.

With that potential, then certainly NEPA and the Endangered Species Act would require an evaluation of the impact associated with a rule causing or leading to those impacts. And again, the current rule does not consider that nor any of the cost or other impacts related to stormwater programs.

So there is a huge consistency or inconsistency problem that we think must be corrected for the rule to be consistent with the statutes and with your executive orders.

Thank you.

Response to: CTRH-001-009a

Subject Matter Code: K Watershed Approach

Comment ID: CTR-021-003
Comment Author: LeBoeuf, Lamb, Green & MacRae
Document Type: Local Government
State of Origin: CA
Represented Org: City of Sunnyvale
Document Date: 09/25/97
Subject Matter Code: K Water Shed Approach
References: Letter CTR-021 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES

Comment: Sunnyvale has long been an advocate of watershed planning at the local level, and it is an enthusiastic charter participant in the Watershed Planning Initiative for the South Bay (the "WPI"). We believe that the WPI has significant potential to set the pace for "place-based" watershed management planning throughout the San Francisco Bay area, if not in California. The CTR-based criteria, particularly those for metals, will form the starting point for the water modeling which will lead to a TMDL and a wasteload allocation/load allocation for the South Bay. Accordingly, we have devoted significant time and resources to the joint efforts of our sister cities in the South Bay to work with EPA, the Regional Water Quality Control Board, affected industry, and the environmental community to make the WPI work. We believe that the WPI will be a credit to EPA's leadership and willingness to devote the considerable resources required.

In conclusion, we are entirely supportive of many of EPA's innovative approaches towards development of the CTR, particularly as regards the toxic metals. However, we believe that EPA has needlessly failed to comply with many of its legal obligations, particularly as regards the development of human health-based criteria on cancer risk levels of organic pollutants. We urge the Agency to reconsider its position in the matters covered by this letter (as amplified by the EOA Letter) and the CASA/Tri-TAC letter. Sunnyvale pledges its continued participation in place-based watershed management planning in the South Bay, its cooperation with the Agency in making a success of the WPI, and to an ongoing effort by the Agency and others to reach water quality goals in the South Bay. We thank you for the opportunity to comment on the proposed CTR.

Response to: CTR-021-003

EPA appreciates the commenter's support and significant participation in the Watershed Planning Initiative for the South Bay.

Comment ID: CTR-032-002f
Comment Author: Las Gallinas Val. Sanitry Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K Water Shed Approach
References: Letter CTR-032 incorporates by reference letter CTR-035
Attachments? N

CROSS REFERENCES G-01
C-22
G-09
C-24a
C-24
G-04
G-05
G-02

Comment: Regulatory Flexibility and Relief

The District supports EPA's use of "sound science" and current data in developing the proposed criteria in the California Toxics Rule (CTR). The District strongly supports language in the Preamble that references and endorses recommendations of the State Task Forces including use in permitting of:

* reasonable potential analyses * dissolved metals criteria * translators * water effects ratios * site specific objectives * innovative TMDL processes such as effluent trading * performance based interim limits * chronic and acute mixing zones, and * compliance schedules in NPDES permits.

Response to: CTR-032-002f

EPA appreciates the commenter's support of the preamble language concerning the State's use of innovative TMDL processes such as effluent trading.

Comment ID: CTR-032-007
Comment Author: Las Gallinas Val. Sanitry Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K Water Shed Approach
References: Letter CTR-032 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES

Comment: Watershed Management Based Permitting Approach

Since POTWs are only responsible for contributing 1-10% of the toxics mass loading (including copper and mercury) to San Francisco Bay (CTR P. 7-7 EA) it makes economic sense to focus limited public resources on identification of larger and potentially more cost-effective sources to control. The District strongly believes that future permits should be developed using a comprehensive watershed management based approach, consistent with various EPA guidance including the August 1997 Robert Perciasepe TMDL Policy memorandum and the San Francisco Bay Regional Board's July 1997 Watershed Management Initiative Guidance.

The District supports the watershed approach where before additional control measures are imposed on point source dischargers, other potential sources of copper and mercury in the watershed that impact the receiving water need to be identified, quantified, and evaluated as to the potential cost of control

measures. Effluent trading should be permitted and encouraged where it is demonstrated to be a more cost effective pollutant reduction technique than additional point source treatment. We support the use of interim limits with compliance schedules linked to completion of special studies, in situations such as ours where compliance with final mercury and copper limits is not feasible and additional information is required to develop technically defensible and attainable final limits.

Response to: CTR-032-007

EPA appreciates District's support of the watershed management approach and its use in developing permits. However, EPA does not agree that the watershed approach should be applied in such a manner that would preclude additional point source controls until the impact of other sources of pollutants are "... identified, quantified, and evaluated as to the potential cost of control measures." We believe that TMDL development can be an effective tool to conduct such an evaluation and that TMDLs will be a component of many effective watershed management strategies.

EPA agrees with the District that pollutant trading can be a cost effective means of attaining compliance with water quality standards. EPA believes that TMDLs can provide the necessary analytical framework to implement a trading program. EPA will continue to encourage the State to evaluate such programs and will work with the State to ensure that such programs are designed equitably and do not result in the creation of "hot" spots in the watershed (See Draft Framework for Watershed-Based Trading, U.S. EPA 1996).

Comment ID: CTR-034-011
Comment Author: SCAP
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K Water Shed Approach
References: Letter CTR-034 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES

Comment: * As noted in our testimony at the September 18 public hearing, SCAP recommends that EPA describe in the Preamble the Agency's strategy for using a watershed management approach for controlling toxic pollutant inputs to the environment. This is particularly appropriate for pollutants which come primarily from nontraditional sources, are in the ambient environment primarily as a result of historical discharges (e.g. DDT, PCBs), and/or are difficult or very costly to control using end-of-pipe treatment. We believe that it is also appropriate to adopt a watershed approach for pollutants which are known to cause environmental harm - due to bioaccumulation, or other characteristics - but which are below detection levels.

Response to: CTR-034-011

EPA acknowledges the comment suggesting that it describe in the preamble the watershed management approach for controlling toxic pollutants into the environment. We believe that a detailed discussion of the watershed management approach is more appropriate in documents dedicated to the topic. Several documents already exist including EPA's Draft Framework for Watershed-Based Trading, dated May

1996, and EPA's Guidance for Water Quality-based Decisions: the TMDL Approach, dated April 1991. The preamble to the CTR contains information specific to the promulgation of the CTR. EPA appreciates the commenter's request for information and hopes that the documents listed above are informative.

Comment ID: CTR-035-003
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K Water Shed Approach
References:
Attachments? N
CROSS REFERENCES

Comment: Third, with respect to the criteria proposed for adoption in the draft CTR and implementation issues discussed in the preamble to the CTR, we wish to make the following recommendations to EPA.

- Consistent with EPA's Watershed Approach Framework and NPDES Watershed Strategy, EPA should describe in the Preamble the Agency's strategy for implementing a watershed management approach to achieve the CTR criteria in California, particularly since, as EPA's Economic Analysis for the CTR found, many -- if not most of the criteria will not be achieved solely with point source controls (U.S. EPA, 1996a and 1994a).

Response to: CTR-035-003

EPA acknowledges the comment suggesting that it include and describe in the preamble its strategy for implementing a watershed approach to achieve water quality standards based on CTR criteria. Please see response to CTR-034-011. The watershed approach is a flexible approach which may vary widely between water bodies in different situations. Since the State will create and implement a watershed management approach, EPA cannot prescribe an approach or strategy for the State to achieve water quality standards based on CTR criteria for all California water bodies. Various EPA publications exist for states and dischargers to use in developing strategies best suited for particular water quality situations for specific water bodies. These publications include those the commenter noted. EPA supports the State's use of a watershed management approach to implement CTR-based water quality standards for particular water bodies and pollutants.

Comment ID: CTR-036-011
Comment Author: County of Orange
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K Water Shed Approach
References: Letter CTR-036 incorporates by reference letters CTR-013, CTR-018, CTR-031, CTR-034 and CTR-040

Attachments? N
CROSS REFERENCES

Comment: We are concerned that the proposed rule reflects a reversal to the comrnand-and-control approach of water quality regulation and marks a policy shift away from the community-driven 'watershed' approach that EPA has been promoting. Orange County has a number of fledgling 'watershed' programs that we feel offer potential to effectively prioritize the approaches to be taken on a watershed-specific basis.

Response to: CTR-036-011

EPA disagrees with the comment that the CTR reflects a reversal to the command and control approach and marks a policy shift away from the watershed approach. The CTR merely sets into place water quality criteria for the State of California. These criteria, combined with the State-adopted beneficial uses, create water quality standards which are necessary to set bench marks for the State's water quality control programs, strategies, and approaches. The methods used to achieve the standards will continue to be through NPDES permits and other State programs, including programs which may utilize the watershed management approach. EPA continues to encourage and support the State's use of the watershed management approach to achieve water quality standards in various water quality control programs, and for appropriate situations.

Comment ID: CTR-059-014
Comment Author: Los Angeles County Sanit. Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: K Water Shed Approach
References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y
CROSS REFERENCES

Comment: Watershed Management

The Sanitation Districts recommend that EPA describe in the Preamble the Agency's strategy for using a watershed management approach for controlling toxic pollutant inputs to the environment. This is particularly appropriate for pollutants which come primarily from nontraditional sources, are in the ambient environment primarily as a result of historical discharges (e.g. DDT, PCBs), and/or are difficult or very costly to control using end-of-pipe treatment. We also believe that a watershed approach is the appropriate way to address pollutants which are known to cause environmental harm -- due to bioaccumulation, or other characteristics -- but which are below detection levels. We particularly encourage EPA to use a flexible watershed-based approach in implementing the CTR in the types of situations described above, where a point source-oriented command-and-control strategy is not likely to be effective.

Response to: CTR-059-014

In response to the comment that EPA should describe in its preamble the watershed management approach to achieve CTR-based water quality standards, please see response to CTR-035-003.

Comment ID: CTR-067-004b
Comment Author: Ojai Valley Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: K Water Shed Approach
References:
Attachments? N
CROSS REFERENCES E-01n

Comment: * In addition, EPA cannot make an accurate determination of the costs and benefits of promulgating CTR criteria for those criteria that are below achievable detection limits. Because detection limits for some pollutants will most likely improve in the near future, dischargers who are reporting regulatory compliance with current detection limits may not be in compliance when lower detection limits are achievable. OVSD (and likely other dischargers as well) have historically been required to report pollutant results with little regard to the detection limit achieved by the contract laboratory conducting the testing. This may have led to EPA's grossly under estimating the cost impact of the CTR. Detection limits of many priority pollutants identified in the CTR are actually lower than those achieved during recent special testing of OVSD's effluent to identify low pollutant levels. Therefore, the potential compliance costs to our commercial and residential dischargers could be significant, yet the Economic Analysis for the draft CTR could not estimate such costs. As a more reasonable alternative, OVSD recommends that a watershed approach be used to address these pollutants. OVSD's receiving water (the Ventura River) is currently managed using the watershed approach.

Response to: CTR-067-004b

In response to the comment that EPA should use a watershed approach to address CTR-based water quality standards, please see response to CTR-035-003.

Comment ID: CTR-083-002
Comment Author: Fairfield-Suisun Sewer Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K Water Shed Approach
References: Letter CTR-083 incorporates by reference letters CTR-035 and CTR-054
Attachments? N
CROSS REFERENCES

Comment: * The District supports EPA Headquarters' Watershed Approach Framework and NPDES Watershed Strategy. We believe the CTR should address the EPA Region IX strategy for implementing

this management approach for pollutants with attainability issues. This is particularly crucial when regulating bioaccumulative pollutants, such as mercury. Region IX's commitment to this approach will insure appropriate consideration is given to watershed management strategies by State agencies when implementing the CTR.

Response to: CTR-083-002

EPA acknowledges the commenter's support for the watershed management approach. However, in response to the comment that EPA address the watershed management approach in the CTR for pollutants with attainability problems, please see response to CTR-035-003. EPA continues to support the State's use of the watershed management approach where appropriate.

Comment ID: CTRH-002-015
Comment Author: Lisa Ohlund
Document Type: Public Hearing
State of Origin: CA
Represented Org: Alliance of So. CA POTWs
Document Date: 09/18/97
Subject Matter Code: K Water Shed Approach
References:
Attachments? N
CROSS REFERENCES

Comment: We suggest that EPA give consideration to using a watershed management approach to achieve the clean water goals for controlling toxic pollutant inputs into the environment rather than the traditional "command and control" approach, and that a strategy for doing this be included in the preamble to the rule. This is particularly appropriate for pollutants which come primarily from nontraditional sources and are difficult or very costly to control using end-of-pipe treatment.

Response to: CTRH-002-015

EPA agrees with the comment that the watershed management approach should be used for controlling toxic pollutants in certain situations. Please see response to CTR-035-003.

Subject Matter Code: K-01 TMDLs

Comment ID: CTR-004-006
Comment Author: South Bayside System Authority
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? N
CROSS REFERENCES

Comment: Available Regulatory Relief under the California Toxics Rule

The Preamble to the California Toxics Rule (CTR), and the rules accompanying Economic Analysis (EA), place a great deal of emphasis on the ability of dischargers to use alternative regulatory approaches to comply with CTR criteria if the cost of treatment technology was prohibitively expensive. For example, the EA assumes that, if the estimated annualized cost for removing a pollutant exceeded a cost trigger,(*1) "dischargers would explore the use of alternative regulatory approaches to comply with CTR-based effluent limits." EA at. pg. 4 (emphasis added). Based on this assumption, no treatment cost was estimated for the facility. (*2)

The types of alternative regulatory approaches assumed available for dischargers in California include phased total maximum daily loads (TMDLs), water quality standard variances, site-specific criteria, change in designated use, and alternative mixing zones. EA at pg. 4-5. The following sections will discuss each of EPA's proposed methods for regulatory relief and explain whether or not these methods can truly be used to provide relief from the CTR-based permit limits as anticipated by EPA. It should be noted that the actual language of the rule itself does riot mention any of the methods of regulatory relief. Therefore, this analysis will be based solely upon the language contained in the Preamble to the CTR.

Total Maximum Daily Loads (TMDLS)

The majority of the discussion of TMDLs contained in the Preamble to the CTR is merely a reiteration of the requirements of the Clean Water Act (CWA) and the existing regulations. See CTR at pg. 42185-6; see accord 33 U.S.C. Section 1313(d)(1)(C) and 40 C.F.R. Section 130.7. However, the Preamble discussion also contains recommendations regarding the implementation of TMDLs that merit some review.

First, EPA recommends that, since the TMDL process can be significantly labor and data intensive, collaborative efforts to establish TMDLs on water quality limited water bodies should be pursued. EPA envisions that this collaborative effort by dischargers, the State, EPA, and other stakeholders, could distribute work and associated costs between the interested parties, as well as shorten the overall time necessary to complete the analyses. See CTR at pg. 42185-6. This language attempts to alter the current statutory and regulatory language requiring that States must perform TMDLS, which are then submitted for EPA approval. If EPA is now proposing to allow other entities or coalitions to be able to establish TMDLS, this authority must be placed in the language of the rule itself, if not in an amendment to the CWA.

Second, EPA recommends innovative alternatives to traditional "pounds per day" TMDLS. The regulations and EPA guidance reviewed regarding TMDLs did not mention whether TMDLs had to be established as "pounds per day," The regulations define of "load" as "an -amount of matter, . . that is introduced into a receiving water" (40 C.F.R. Section 130.2(c)) and discuss TMDLs in terms of either mass per time, toxicity, or other appropriate measure" (40 C.F.R. Section 130.2(I)). These definitions seem to be flexible enough to allow for EPA's recommended alternatives to "traditional pounds per day TMDLS."

A third recommendation pertained to effluent or pollutant trading. In the Preamble to the CTR, EPA encourages innovative approaches such as effluent trading as a method to attain and/or maintain water quality standards. The Preamble at page 42185 describes effluent trading as follows:

Effluent trading allows sources that can control pollutants beyond compliance with current requirements to sell or trade credits for its excess reduction to in other source unable to control its own pollutants is effectively or as efficiently. The goal of an effluent trading program is to achieve similar or improved environmental results in a more cost-effective manner than under current regulatory structures. EPA's most current policy on effluent trading is summarized in the "Policy Statement for Effluent Trading in Watersheds" which was issued in January of 1996 and which reiterates President Clinton's commitment to effluent trading as expressed in the March 16, 1995 report on "Reinventing Environmental Regulation." The Policy states that the "EPA will work cooperatively with key stakeholders to find sensible, innovative ways to meet water quality standards quicker and at less cost than traditional approaches alone." The policy outlines several different types of trades that may take place. These trades include but are not limited to the following; (1) Intra-plant trading between outfalls within one facility; (2) pretreatment trading between indirect industrial point sources that discharge to a POTW; (3) point to point source trading, point to nonpoint source trading, and nonpoint to nonpoint source trading.

The existing regulations and EPA guidance relating to TMDLs already contemplate some form of pollutant trading.(*3) However, the regulations currently do not specifically allow the degree of trading outlined in the Preamble. To clarify that this is now EPA policy, EPA should propose language to that effect within the regulatory language itself.

The final recommendation EPA makes related to TMDLs addresses the use of interim permit limits when a TMDL/WLA/LA or other special study is underway but not completed. The Preamble gives guidance on how interim limits should be calculated. EPA states that "past performance and future uncertainty can be considered as factors in determining interim permit limits; however, permitting authorities may consider other factors, particularly factors concerning the water quality of the receiving water body and the overall goal to attain the water quality standard." EPA further states that it supports innovative ideas such as using specific method for determining interim limits and "trigger" concentrations above which corrective action would be necessary. Furthermore, EPA notes that the State, as the permitting authority, has broad discretion in determining how interim permit limits should be ascertained in different situations. CTR Preamble at pg. 42184-5. This language is helpful, but it should be placed into the rule so that it has the force of law and may be utilized as such.

As a Final note regarding the use of TMDLs as a form of regulatory relief, it should be noted that theuse of less restrictive effluent limitations based on TMDLs and interim limits is limited by the TMDL process itself as well as the antibacksliding provisions of the CWA. EPA guidance recognized these facts in its TMDL guidance with the following statement:

In developing a TMDL it is important to keep in mind certain constraints on the WLA [wasteload allocation] portion that are imposed by antibacksliding regulatory provisions. The WLA will normally

result in new or more stringent water quality-based limits than those contained in a previously issued permit. In a limited number of cases, however, it is conceivable that less stringent water quality-based limits could result. In these cases, permit limits must conform to the antibacksliding provisions contained in section 402(o) of the CWA. (*4)

(*1) This cost trigger is $200 per toxic pounds-equivalent for a facility under the low-end scenario, and $500 per toxic pounds-equivalent for a category of dischargers under the high-end scenario, See EA at pg. 4.

(*2) In addition, pollutant load reductions word not calculated or credited for any pollutant for which an alternative regulatory approach was pursued. Id.

(*3) See 40 C.F.R. Section 130.2(I) ("If Best Management Practices (BMPS) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs."); see also EPA, Guidance for Water Quality-based Decisions: The TMDL Process, EPA Doc. No. 440/4-91-001 it pg. 51 (April 1991).

(*4) EPA, Guidance for Water Quality-based Decisions: The TMDL Process, EPA Doc. No. 440/4-91-001 at pg. 20 (April 1991) (Emphasis added)

Response to: CTR-004-006

EPA does not agree that a collaborative approach to TMDL development described in the preamble to the proposed CTR requires a change in statutory or regulatory language. Currently, the State's process for TMDL approval includes amendment of the affected Regional Board's Basin Plan, which requires approval by the State Water Resources Control Board and the Office of Administrative Law, prior to submital to EPA. The collaborative approach which EPA supports does not allow any other entity beside the State to establish TMDLs. The basis for the TMDL (e.g. the technical work) can be performed by other entities. That technical work can then be submitted by the State to EPA as part of the supporting documentation of the State-established TMDL.

EPA agrees with the commentor that current Federal regulations provide for flexibility in the manner that TMDLs are expressed. The commentor asserts that regulations do not specifically allow the degree of trading outlined in the preamble to the proposed rule. The current regulations do not prohibit the trading described in the preamble. TMDLs can provide the necessary analytical framework to ensure that trades are equitable and do not result in the creation of "hot spots".

With respect to TMDLs as a form of regulatory relief, the commentor asserts that EPA guidance indicates that little relief can occur for the waste load allocation portion of the TMDL due to anti-backsliding provisions of section 402(o) of the Clean Water Act. EPA believes that section 303(d)(4) of the Clean Water Act specifically allows for less restrictive effluent limits as long as such limits are consistent with an approved TMDL. However, these issues concerning TMDLs are outside the scope of this rule, and the rules concerning TMDLs may change.

In response to the commentor's discussion concerning the different regulatory relief approaches that EPA discusses in its Economic Analysis, please see response to CTR-032-004.

Comment ID: CTR-021-002d
Comment Author: LeBoeuf, Lamb, Green & MacRae
Document Type: Local Government
State of Origin: CA
Represented Org: City of Sunnyvale
Document Date: 09/25/97
Subject Matter Code: K-01 TMDLs
References: Letter CTR-021 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES G-04; C-24a; C-22; G-05; G-02

Comment: Sunnyvale is very supportive of many fine concepts advanced in the proposed CTR, and we join with CASA/Tri-TAC in complimenting the Agency on its proposed positions with regard to such matters as: (a) the use of interim effluent limitations in NPDES permits during the pendency of TMDL and other special studies; (b) the allowance of water effects ratios in adjusting the criteria for metals without the necessity for additional rulemaking to establish site-specific objectives; (c) the use of the dissolved state for the metals criteria; (d) the use of cooperative, intergovernmental, and stakeholder-involved approaches towards the development of TMDLs;(e) the allowance of dilution for both chronic and acute pollutants; and (f) the allowance of compliance schedules in NPDES permits.

Response to: CTR-021-002d

EPA appreciates the commenter's support of EPA's preamble discussion concerning the State's use of cooperative approaches toward the development of TMDLs.

Comment ID: CTR-034-012b
Comment Author: SCAP
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-01 TMDLs
References: Letter CTR-034 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES G-04

Comment: * SCAP supports EPA's discussion in the Preamble regarding the use of interim permit limits while Total Maximum Daily Loads.(TMDLs) and other special studies are being performed. We strongly urge EPA to support the use of the SWRCB Permitting Task Force's recommended approach for deriving interim permit limits.

Response to: CTR-034-012b

EPA appreciates the commenter's support of the discussion in the preamble concerning the State's use of interim permit limits while TMDLs or other special studies are being developed. EPA supports the State's consideration of the stakeholder Task Force recommendations to help deal with these issues.

Comment ID: CTR-035-002g
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? N
CROSS REFERENCES C-22; C-01a; C-08a; G-05; G-04; G-09; C-24a

Comment: Second, we commend EPA for its inclusion in the CTR of several innovative and flexible regulatory approaches, such as metals criteria expressed as dissolved rather than total recoverable concentrations, and the revised human health criterion for mercury. In addition, in light of the issues surrounding the human health criteria for arsenic we support EPA's decision not to promulgate human health criteria at this time. With respect to implementation issues discussed in the Preamble, we support EPA's policies and guidance regarding the application of mixing zones and dilution credits. the use of interim permit limits while Total Maximum Daily Loads (TMDLs) and other special studies are being performed, and EPA's guidance to Regional Water Quality Control Boards (RWQCBs) that they may use any of the methods described in EPA's guidance document on the use of translators. We also support EPA's proposal to create a rebuttable presumption for Water Effects Ratios (WERs), allowing the RWQCBs and SWRCB to develop site-specific WERs that can be approved by EPA during the NPDES permit approval process. We believe that this approach will help facilitate the development of appropriate site-specific adjustments for metals criteria.

Response to: CTR-035-002g

EPA appreciates the commenter's support of the discussion in the preamble concerning the State's use of interim permit limits while TMDLs or other special studies are being developed.

Comment ID: CTR-035-032a
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? N
CROSS REFERENCES K-03

Comment: C. Implementation Issues pp. 42184-42185 -- Total Maximum Daily Loads (TMDLs) We agree with EPA's statements in the Preamble in support of the recommendations of the Permitting and Compliance Issues Task Force regarding the benefits of collaborative approaches to developing TMDLs. We also endorse the State's and EPA's policy to allow innovative alternatives to traditional "pounds per day" TMDLs, and suggest that EPA expand this reference in the Preamble to include the concept of "quantifiable targets," under which TMDLs could be expressed as a mass loading, a concentration, a

percent reduction, an ecosystem improvement, or a degree of implementation of a control measure (such as a best management practice) (see SWRCB, 1995, Part VI).

EPA also encourages the use of innovative approaches such as effluent trading, within the TMDL framework. While we support the concept of effluent trading, we do have concerns about how EPA intends for it to be implemented. For instance, in comments submitted to EPA on September 6, 1996 on EPA's Draft Framework for Watershed-Based Trading (May 1996), we pointed out that the proposed framework was overly prescriptive and, as a result, would likely significantly restrict watershed-based trading in California. A few of the barriers to trading we identified in the draft framework include: provisions limiting the duration of trades to the five year term of NPDES permits; limitations on the effect of trades on existing effluent limits, compliance schedules or enforcement actions; discouragement of trading for toxic pollutants; and inequitable requirements for point sources to demonstrate a "reasonable assurance" that a trade will be successful. We recommend that EPA include language in the Preamble to the CTR emphasizing a flexible approach to both TMDLs and effluent trading; that trading is voluntary for all involved parties; and that interim limits will be placed in NPDES permits while the necessary ambient data arc gathered and analytical tools are developed.

Response to: CTR-035-032a

EPA appreciates the commenter's support of the preamble discussion concerning the State's use of cooperative approaches toward the development of TMDLs and concerning the State's use of innovative alternatives to traditional "pounds per day" TMDLs. The commenter suggests that EPA expand the reference to include the concept of "quantifiable targets", under which "TMDLs could be expressed as a mass loading, a concentration, a percent reduction, an ecosystem improvement, or a degree of implementation of a control measure". Currently, TMDLs must be established to implement the applicable water quality standard and may be expressed in terms of mass per time, toxicity, or other appropriate measure (40 CFR 130.2(i)). Other appropriate measures include mass loading, concentration, or other indicators. The analysis supporting the TMDL must describe how the TMDL will result in the attainment of water quality standards; numeric targets are usually included in calculations to interpret applicable standards and provide the basis for TMDL calculations. Although implementation of control measures or best management practices (BMPs) will often be a component of the State's TMDL implementation plan, degree of BMP implementation will not suffice as a TMDL because this approach does not clearly demonstrate that water quality standards will be attained. Moreover, since the manner of BMP implementation often determines the effectiveness of the BMP (i.e. there is a high degree of uncertainty in the effectiveness of the BMP), the use of such a "quantifiable target" would require the use of a prohibitively large margin of safety and thus, may be infeasible. These issues, however, are beyond the scope of the CTR, and rules for TMDLs may change.

The commenter also recommends that EPA include language in the preamble emphasizing a flexible approach to both TMDLs and effluent trading; that trading is voluntary for all parties; and that interim limits will be placed in NPDES permits while the necessary data and analytical tools are developed. The preamble to the proposed rule summarized the available flexibility in both TMDLs and effluent trading, as well as supported the State's use of interim permit limits during the development of TMDLs. EPA agrees that effluent trading should be voluntary and believes that TMDLs can provide the analytical framework to support trades. However, as noted above, this is beyond the scope of the CTR, and rules for TMDLs may change.

Comment ID: CTR-040-048

Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-01 TMDLs
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: The Preamble to the California Toxics Rule (CTR), and the rules accompanying Economic Analysis (EA), place a great deal of emphasis on the ability of dischargers to use alternative regulatory approaches to comply with CTR criteria if the cost of treatment technology was prohibitively expensive. For example, the EA assumes that, if the estimated annualized cost for removing a pollutant exceeded a cost trigger,(*1) "dischargers would explore the use of alternative regulatory approaches to comply with CTR-based effluent limits." EA at.pg. 4 (emphasis added). Based on this assumption, no treatment cost was estimated for the facility.(*2)

The types of alternative regulatory approaches assumed available for dischargers in California include phased total maximum daily loads (TMDLs), water quality standard variances, site-specific criteria, change in designated use, and alternative mixing zones. EA at pg. 4-5. The following sections will discuss each of EPA's proposed methods for regulatory relief and explain whether or not these methods can truly be used to provide relief from the CTR-based permit limits as anticipated by EPA. It should be noted that the actual language of the rule itself does not mention any of the methods of regulatory relief. Therefore, this analysis will be based solely upon the language contained in the Preamble to the CTR.

Total Maimum Daily Loads (TMDLs)

The majority of the discussion of TMDLs contained in the Preamble to the CTR is merely a reiteration of the requirements of the Clean Water Act (CWA) and the existing regulations. See CTR at pg. 42185-6; see accord 33 U.S.C. section 1313(d)(1)(C) and 40 C.F.R. section 130.7. However, the Preamble discussion also contains recommendations regarding the implementation of TMDLs that merit some review.

First, EPA recommends that, since the TMDL process can be significantly labor and data intensive, collaborative efforts to establish TMDLs on water quality limited water bodies should be pursued. EPA envisions that this collaborative effort by dischargers, the State, EPA, and other stakeholders, could distribute work and associated costs between the interested parties, as well as shorten the overall time necessary to complete the analysis. See CTR at pg. 42185-6. This language attempts to alter the current statutory and regulatory language requiring that States must perform TMDLs, which are then submitted for EPA approval. If EPA is now proposing to allow other entities or coalitions to be able to establish TMDLs, this authority must be placed in the language of the rule itself, if not in an amendment to the CWA.

Second, EPA recommends innovative alternatives to traditional "pounds per day" TMDLs. The regulations and EPA guidance reviewed regarding TMDLs did not mention whether TMDLs had to be established as "pounds per day." The regulations define of "load" as "an amount of matter . . . that is introduced into a receiving water" (40 C.F.R. section 130.2(e)) and discuss TMDLs in terms of either mass per time, toxicity, or other appropriate measure" (40 C.F.R. section 130.2(i)). These definitions

seem to be flexible enough to allow for EPA's recommended alternatives to "traditional pounds per day TMDLs."

A third recommendation pertained to effluent or pollutant trading. In the Preamble to the CTR, EPA encourages innovative approaches such as effluent trading as a method to attain and/or maintain water quality standards. The Preamble at page 42185 describes effluent trading as follows:

Effluent trading allows sources that can control pollutants beyond compliance with current requirements to sell or trade credits for its excess reduction to another source unable to control its own pollutants as effectively or as efficiently. The goal of an effluent trading program is to achieve similar or improved environmental results in a more cost-effective manner than under current regulatory structures. EPA's most current policy on effluent trading is summarized in the "Policy Statement for Effluent Trading in Watersheds" which was issued in January of 1996 and which reiterates President Clinton's commitment to effluent trading as expressed in the March 16, 1995 report on "Reinventing Environmental Regulation." The Policy states that "EPA will work cooperatively with key stakeholders to find sensible, innovative ways to meet water quality standards quicker and at less cost than traditional approaches alone." The policy outlines several different types of trades that may take place. These trades include but are not limited to the following: (1) Intra-plant trading between outfalls within one facility; (2) pretreatment trading between indirect industrial point sources that discharge to a POTW; (3) point to point source trading, point to nonpoint source trading, and nonpoint to nonpoint source trading.

The existing regulations and EPA guidance relating to TMDLs already contemplate some form of pollutant trading.(*3) However, the regulations currently do not specifically allow the degree of trading outlined in the Preamble. To clarify that this is now EPA policy, EPA should propose language to that effect within the regulatory language itself.

The final recommendation EPA makes related to TMDLs addresses the use of interim permit limits when a TMDL/WLA/LA or other special study is underway but not completed. The Preamble gives guidance on how interim limits should be calculated. EPA states that "pastperformance and future uncertainty can be considered as factors in determining interim permit limits, however, permitting authorities may consider other factors, particularly factors concerning the water quality of the receiving water body and the overall goal to attain the water quality standard." EPA further states that it supports innovative ideas such as using specific method for determining interim limits and "trigger" concentrations above which corrective action would be necessary. Furthermore, EPA notes that the State, as the permitting authority, has broad discretion in determining how interim permit limits should be ascertained in different situations. CTR Preamble at pg. 42184-5. This language is helpful, but it should be placed into the rule so that it has the force of law and may be utilized as such.

As a final note regarding the use of TMDLs as a form of regulatory relief, it should be noted that the use of less restrictive effluent limitations based on TMDLs and interim limits is limited by the TMDL process itself as well as the antibacksliding provisions of the CWA. EPA guidance recognized these facts in its TMDL guidance with the following statement:

In developing a TMDL it is important to keep in mind certain constraints on the WLA [wasteload allocation] portion that are imposed by antibacksliding regulatory provisions. The WLA will normally result in new or more stringent water quality-based limits that those contained in a previously issued permit. In a limited number of cases, however, it is conceivable that less stringent water quality-based limits could result. In these cases, permit limits must conform to the antibacksliding provisions contained in section 402(o) of the CWA.(*4)

(*1) This coat trigger is $200 per toxic pounds-equivalent for a facility under the low-end scenario, and $500 per toxic pounds-equivalent for a category of dischargers under the high-end scenario. See EA at pg. 4.

(*2) In addition, pollutant load reductions were not calculated or credited for any pollutant for which an alternative regulatory approach was pursued. Id.

(*3) See 40 C.F.R. section 130.2(i) ("If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs."); see also EPA, Guidance for Water Quality-based Decisions: The TMDL Process, EPA Doc. No. 440/4-91-001 at pg. 51 (April 1991).

(*4) EPA, Guidance for Water Quality-based Decisions: The TMDL Process, EPA Doc. No. 440/4-91-001 at pg. 20 (April 1991) (emphasis added).

Response to: CTR-040-048

In response to the commenter's discussion concerning TMDLs with respect to the collaborative approach, alternatives to traditional "pounds per day" TMDLs, effluent and/or pollutant trading, and the use of interim permit limits, see response to CTR-004-006.

Comment ID: CTR-041-044
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? N
CROSS REFERENCES

Comment: The Preamble to the California Toxics Rule (CTR), and the rules accompanying Economic Analysis (EA), place a great deal of emphasis on the ability of dischargers to use alternative regulatory approaches to comply with CTR criteria if the cost of treatment technology was prohibitively expensive. For example, the EA assumes that, if the estimated annualized cost for removing a pollutant exceeded a cost trigger,(*1) "dischargers would explore the use of alternative regulatory approaches to comply with CTR-based effluent limits. EA at.pg. 4(emphasis added). Based on this assumption, no treatment cost was estimated for the facility.(*2)

The types of alternative regulatory approaches assumed available for dischargers in California include phased total maximum daily loads (TMDLs), water quality standard variances, site-specific criteria, change in designated use, and alternative mixing zones. EA at pg. 4-5. The following sections will discuss each of EPA's proposed methods for regulatory relief and explain whether or not these methods can truly be used to provide relief from the CTR-based permit limits as anticipated by EPA. It should be noted that the actual language of the rule itself does not mention any of the methods of regulatory relief.

Therefore, this analysis will be based solely upon the language contained in the Preamble to the CTR.

Total Maimum Daily Loads (TMDLs)

The majority of the discussion of TMDLs contained in the Preamble to the CTR is merely a reiteration of the requirements of the Clean Water Act (CWA) and the existing regulations. See CTR at pg. 42185-6; see accord 33 U.S.C. section 1313(d)(1)(C) and 40 C.F.R. section 130.7. However, the Preamble discussion also contains recommendations regarding the implementation of TMDLs that merit some review.

First, EPA recommends that, since the TMDL process can be significantly labor and data intensive, collaborative efforts to establish TMDLs on water quality limited water bodies should be pursued. EPA envisions that this collaborative effort by dischargers, the State, EPA, and other stakeholders, could distribute work and associated costs between the interested parties, as well as shorten the overall time necessary to complete the analysis. See CTR at pg. 42185-6. This language attempts to alter the current statutory and regulatory language requiring that States must perform TMDLs, which are then submitted for EPA approval. If EPA is now proposing to allow other entities or coalitions to be able to establish TMDLs, this authority must be placed in the language of the rule itself, if not in an amendment to the CWA.

Second, EPA recommends innovative alternatives to traditional "pounds per day" TMDLs. The regulations and EPA guidance reviewed regarding TMDLs did not mention whether TMDLs had to be established as "pounds per day." The regulations define of "load" as "an amount of matter that is introduced into a receiving water (40 C.F.R. section 130.2(e)) and discuss TMDLs in terms of either mass per time, toxicity, or other appropriate measure" (40 C.F.R. section 130.2(i)). These definitions seem to be flexible enough to allow for EPA's recommended alternatives to "traditional pounds per day TMDLs."

A third recommendation pertained to effluent or pollutant trading. In the Preamble to the CTR, EPA encourages innovative approaches such as effluent trading as a method to attain and/or maintain water quality standards. The Preamble at page 42185 describes effluent trading as follows:

Effluent trading allows sources that can control pollutants beyond compliance with current requirements to sell or trade credits for its excess reduction to another source unable to control its own pollutants as effectively or as efficiently. The goal of an effluent trading program is to achieve similar or improved environmental results in a more cost-effective manner than under current regulatory structures. EPA's most current policy on effluent trading is summarized in the "Policy Statement for Effluent Trading in Watersheds" which was issued in January of 1996 and which reiterates President Clinton's commitment to effluent trading as expressed in the March 16, 1995 report on "Reinventing Environmental Regulation." The Policy states that "EPA will work cooperatively with key stakeholders to find sensible, innovative ways to meet water quality standards quicker and at less cost than traditional approaches alone." The policy outlines several different types of trades that may take place. These trades include but are not limited to the following: (1) Intra-plant trading between outfalls within one facility; (2) pretreatment trading between indirect industrial point sources that discharge to a POTW; (3) point to point source trading, point to nonpoint source trading, and nonpoint to nonpoint source trading.

The existing regulations and EPA guidance relating to TMDLs already contemplate some form of pollutant trading.(*3) However, the regulations currently do not specifically allow the degree of trading outlined in the Preamble. To clarify that this is now EPA policy, EPA should propose language to that effect within the regulatory language itself.

The final recommendation EPA makes related to TMDLs addresses the use of interim permit limits when a TMDL/WLA/LA or other special study is underway but not completed. The Preamble gives guidance on how interim limits should be calculated. EPA states that "past performance and future uncertainty can be considered as factors in determining interim permit limits, however, permitting authorities may consider other factors, particularly factors concerning the water quality of the receiving water body and the overall goal to attain the water quality standard." EPA further states that it supports innovative ideas such as using specific method for determining interim limits and "trigger" concentrations above which corrective action would be necessary. Furthermore, EPA notes that the State, as the permitting authority, has broad discretion in determining how interim permit limits should be ascertained in different situations. CTR Preamble at pg, 42184-5. This language is helpful, but it should be placed into the rule so that it has the force of law and may be utilized as such.

As a final note regarding the use of TMDLs as a form of regulatory relief, it should be noted that the use of less restrictive effluent limitations based on TMDLs and interim limits is limited by the TMDL process itself as well as the antibacksliding provisions of the CWA. EPA guidance recognized these facts in its TMDL guidance with the following statement:

In developing a TMDL it is important to keep in mind certain constraints on the WLA [wasteload allocation] portion that are imposed by antibacksliding regulatory provisions. The WLA will normally result in new or more stringent water quality-based limits that those contained in a previously issued permit. In a limited number of cases, however, it is conceivable that less stringent water quality-based limits could result. In these cases, permit limits must conform to the antibacksliding provisions contained in section 402(o) of the CWA.(*4)

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Response to: CTR-041-044

In response to the commenter's discussion concerning TMDLs with respect to the collaborative approach, alternatives to traditional "pounds per day" TMDLs, effluent and/or pollutant trading, and the use of interim permit limits, see response to CTR-004-006.

Comment ID: CTR-044-039
Comment Author: City of Woodland
Document Type: Local Government

State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? N
CROSS REFERENCES

Comment: The Preamble to the California Toxics Rule (CTR), and the rules accompanying Economic Analysis (EA), place a great deal of emphasis on the ability of dischargers to use alternative regulatory approaches to comply with CTR criteria if the cost of treatment technology was prohibitively expensive. For example, the EA assumes that, if the estimated annualized cost for removing a pollutant exceeded a cost trigger,(*1) "dischargers would explore the use of alternative regulatory approaches to comply with CTR-based effluent limits. EA at.pg. 4(emphasis added). Based on this assumption, no treatment cost was estimated for the facility.(*2)

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Response to: CTR-044-039

In response to the commenter's discussion concerning TMDLs with respect to the collaborative approach, alternatives to traditional "pounds per day" TMDLs, effluent and/or pollutant trading, and the use of interim permit limits, see response to CTR-004-006.

Comment ID: CTR-054-043
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? N
CROSS REFERENCES

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Response to: CTR-054-043

In response to the commenter's discussion concerning TMDLs with respect to the collaborative approach, alternatives to traditional "pounds per day" TMDLs, effluent and/or pollutant trading, and the use of interim permit limits, see response to CTR-004-006.

Comment ID: CTR-057-010a
Comment Author: City of Los Angeles
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: K-01 TMDLs
References:

Attachments? N
CROSS REFERENCES G-07; C-24

Comment: Implementation

Although the proposed Rule discusses implementation issues such as TMDLs, variances, SSOs, and interim permits, it lacks evidence of support for any of these provisions. We believe that this will have the effect of reducing the State's confidence or perceived authority in granting any of these provisions to individual POTWs. For example, Page 42186 of the CTR lists six criteria that must be used by the State to determine the non-attainability of a water quality standard; we are doubtful that any of these criteria would be strictly applicable to our facilities with respect to lindane and DDT. We believe CTR variance criteria should include economic considerations for specific discharger implementation efforts. Unless the EPA provides more support for these provisions, we fear that the State will either not grant us a legitimate variance or will waiver in its commitment to act at all.

Response to: CTR-057-010a

EPA disagrees with the comment that although the preamble discusses implementation issues, it lacks evidence of support for any of them. The CTR preamble section to the proposed rule entitled "Implementation" discusses EPA's general policy on TMDLs, variances, and interim permit limits. EPA's intention for including the discussions is to clearly state that it supports the State's appropriate use of the action as an implementation tool, not to discourage the use of the action in any way. EPA does not believe that its discussion in the preamble would discourage the State in any way, and in fact would facilitate the appropriate use of the provision.

Comment ID: CTR-058-011
Comment Author: Western States Petroleum Assoc
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? Y
CROSS REFERENCES

Comment: TMDLs. WSPA recognizes that the law requires the state to adopt TMDLs for those waters which fail water quality standards and are listed on the 303(d) list. WSPA supports the TMDL process based on the following approach:

* Waters should only be listed after careful review of the standards and careful assessment of actual water quality. WPSA does not support the universal application of "independent applicability". In some cases independent applicability is appropriate but in many cases it is overkill and EPA should give states flexibility in applying it. * For metals and many organics, the decision to list should be based on the bioavailable (e.g., dissolved) fraction, not total. * A careful process of prioritization should be encouraged. Also, reasonable schedules for implementing TMDL programs must be established. EPA and the states should be moving expeditiously to set such schedules so that the courts do not take the decision-making process out of their hands. * Today, nearly everybody recognizes that non-point sources

rather than point sources are the major problem for most impaired waters. EPA should supply additional tools to the states for dealing with nonpoint sources, and EPA should encourage the emphasis on those sources, whether point or nonpoint, which are the major source of the problem. * Resolution of TMDLs into load and waste load allocations should be based on sound science. Allocations and permit limits should not be largely a political response to the perceived problem. * The relative impact of more stringently regulating point sources should be considered in establishing a strategy. For example, if point sources are 10% of the problem, it may be inappropriate to call for a 50% reduction in their discharges if a 5% overall reduction will have no meaningful impact-on improving the receiving water quality. WSPA believes that airborne deposition in some cases plays a significant role in water quality, and that regulating point sources in such scenarios is often unlikely to produce meaningful results. TMDLs should instead focus on situations where a real impact on receiving water quality can be made through regulation of dischargers (point or nonpoint).

Response to: CTR-058-011

The commenter, in discussing TMDLs, states that waters should only be listed under section 303(d) after a review of the water quality standards and an assessment of "actual water quality". Issues concerning TMDLs are outside the scope of the CTR, and rules concerning TMDLs may change. However, the State should regularly review applicable water quality standards, but EPA does not believe that such a review is a required as part of the decision to list a water body. With respect to the issue of "independent applicability", the statute and regulations require the State to list waters when water quality standards are not being met. In the case of numeric water quality standards, the State may be able to determine whether water quality standards are being met solely on the basis of ambient water column data. In the case of narrative standards, the State may need to consider other available physical, toxicological, and biological data.

It appears that the commenter believes that some 303(d) listing decisions have been based on "best professional judgement" with no supporting ambient data. Although professional judgment plays an important role in any water quality assessment, EPA agrees that decisions to list waters generally should be based on available physical, chemical, and biological data. The commenter and other interested stakeholders can make a substantial contribution to the collection of monitoring data to support the State's assessment of water quality.

The commenter also states that the decision to list should be based on the bioavailable (e.g. dissolved) fraction, not the total, of metals and many organics. As noted above, the State's decision to add a water body/pollutant to the 303(d) list is based on whether the applicable water quality standard is being exceeded. National guidance on 303(d) listing does not allow waters to be excluded from consideration based on the manner in which existing applicable standards are expressed or the fact that standards revisions are currently underway.

EPA agrees with the commenter that a careful process for prioritization and schedules for implementing the TMDL program should be established. The EPA- approved State guidelines for the 1998 303(d) list update provide for specific criteria to guide prioritization. The State will develop a schedule for completion of TMDLs for all 303(d) listed water bodies (see 1998 Clean Water Act 303(d) Listing Guidelines for California).

EPA agrees with the commenter that additional tools should be provided to the State to address nonpoint source pollution problems. EPA's "Clean Water Action Plan" provides a framework for coordination of Federal activities, especially as it relates to nonpoint source problems. Lastly, as noted above, TMDLs and issues concerning TMDLs are outside the scope of the CTR, and rules and policies concerning

TMDLs may change.

Comment ID: CTR-086-001b
Comment Author: EOA, Inc.
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org: California Dent
Document Date: 09/26/97
Subject Matter Code: K-01 TMDLs
References: Letter CTR-086 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES Q

Comment: CDA's primary concerns are with the potential for additional regulation of wastewater discharges from dental offices to POTWS. Several municipalities in the Bay Area, including the City of San Francisco, have informed CDA that dentist offices are considered a source of mercury discharges to municipal sewer systems, and under the Basin Plan will be subject to additional regulation when lower effluent limits are imposed in municipal NPDES permits. Yet, very little is known about the fate, transport, bioavailability and overall water quality impacts of amalgam related mercury.

CDA in cooperation with San Francisco, has developed a comprehensive program of pollution prevention practices (best management practices) for dental offices that has been distributed statewide and is in the process of being implemented. Yet efforts continue by municipalities in parts of the State, such as San Francisco Bay, to impose increasingly stringent and costly controls on dental offices. Within the current point source regulatory structure. POTWs that have mercury compliance problems, or perceive that they might have if the criteria become more stringent (e.g. through loss of dilution credit), are forced to continue to look "upstream" for additional sources to control, until such time, as recommended, as a more comprehensive watershed based approach is allowed.

CDA is a strong supporter of water quality and human health protection. CDA's primary goals in commenting on the draft CTR are to request that mercury criteria be based on sound science and that mercury regulation be implemented via a watershed management, phased TNML-type approach. CDA is particularly concerned that the CTR does not adequately assess the economic impacts on indirect dischargers nor the extent to which there will be measurable water quality benefits solely from adoption of the proposed mercury criteria for point sources.

Watershed Management Based Approach

Data show that there are elevated levels of mercury in San Francisco Bay waters, sediments, and some fish tissue. It is critical to have a better understanding of watershed-wide mercury inputs, fate, transport, and biogeochemical transformations affecting the San Francisco Bay food chain and human health, and the feasibility and costs of alternative control measures, before imposing potentially onerous control measures (through POTWS) on indirect dischargers, such as dentists, that may not provide measurable water quality or human health benefits.

Since POTWs are only responsible for contributing 1-10% of the toxics mass loading (including mercury) to San Francisco Bay (p. 7-7 EA) it makes economic sense to focus limited public resources on identification of larger and potentially more cost-effective sources to control. Since dentists likely

represent a very minor and declining fraction of the mercury loading to POTWs (due to implementation of BMPs and substitution of non-mercury based compounds for mercury containing dental amalgam), it makes even more public policy sense to fully evaluate and prioritizeall sources and controls before pursuing additional control measures on indirect dischargers such as dentists. This needs to be conducted on a watershed basis, consistent with various EPA guidance including the August 1997 Robert Perciasepe TMDL Policy memorandum and the San Francisco Bay Regional Board's July 1997 Watershed Management Initiative Guidance.

Response to: CTR-086-001b

In response to the comments concerning the scientific basis of the mercury criteria, the TMDL approach for mercury in San Francisco Bay, and the economic assessment of impacts on indirect dischargers, see response to CTR-086-001a. In response to the comment concerning the watershed management approach to mercury in the Bay, the State has listed mercury in San Francisco Bay on its 303(d) list and has targeted completion of a TMDL for mercury in the foreseeable future.

EPA supports the State's decision and schedule to complete a detailed TMDL for mercury for the San Francisco Bay, and EPA agrees with the commenter that it makes good public policy to evaluate and prioritize sources of and controls for mercury coming into the Bay as soon as possible.

Comment ID: CTR-089-001e
Comment Author: Las Virgenes Mncpl Water Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? N
CROSS REFERENCES C-22; C-01a; C-08a; G-05; G-02; G-09

Comment: The draft California Toxics Rule (CTR) is clearly the product of substantial effort by USEPA staff, and we applaud this effort and its intent. On several issues of concern to public utilities, the CTR strikes a good balance between the need to promulgate standards and the need to base those standards on sound science. Examples include the use of dissolved concentrations rather than the total recoverable concentrations for metals, the deferral of human health criteria for arsenic until adequate information is available, and the revision of the human health criterion for mercury. We are also pleased with the CTR's guidance and flexibility, on mixing zones and dilution credits, total maximum daily loads (TMDLs), compliance schedules, and translators.

Response to: CTR-089-001e

EPA appreciates the commenter's support of EPA's preamble discussion of TMDL guidance and flexibility.

Comment ID: CTR-090-010b
Comment Author: C&C of SF, Public Utl. Commis.

Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-01 TMDLs
References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES G-01

Comment: We recommend that:

2. Include in the rule an implementation proposal which states that before a criteria is put into a permit there must first be: an assessment that the pollutant could reasonably interfere with the designated uses of the water; a comprehensive TMDL is done which includes all sources of pollutants to the water body; and a reasonable potential analysis is completed for point source dischargers. Only then, after all of these analyses are completed by the state or EPA should the criteria be converted to a permit limit with the appropriate implementation factors.

Response to: CTR-090-010b

EPA agrees with the commenter that a reasonable potential analysis as well as a determination that the pollutant could reasonably interfere with the designated uses of the water body before a permit limit is placed in a permit for a particular pollutant. The State completes these analyses before a permit limit is placed in a permit. EPA does not agree with the comment that a comprehensive TMDL must be completed on a particular water body for a particular pollutant before the permit limit is placed in a permit for that pollutant. The State is required to protect the beneficial uses of its waters, and thus is required to implement water quality-based effluent limits for particular pollutants which it has knowledge are contributing to preventing the achievement of beneficial uses. EPA agrees, however, that a TMDL for a pollutant may be necessary to comprehensively address a particular problem in a water body.

Comment ID: CTR-092-005
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: K-01 TMDLs
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES

Comment: Total Maximum Daily Loads (TMDL)

The City firmly endorses language in the preamble discussing the merits of a collaborative approach toward the establishment of TMDLs on water quality limited water bodies. The City agrees that this approach could better distribute costs and resources between regulators and the regulated community, as well as shorten the time necessary to complete the modeling analysis. The City supports innovative alternatives to the traditional TMDL approach of "pounds per day" and encourages the concept of

effluent trading as a method to aftain or maintain water quality compliance. The City further encourages EPA to better define these and related programs in order to facilitate the TMDL process.

Response to: CTR-092-005

EPA appreciates the commenter's support of EPA's preamble discussions concerning the State's use of cooperative approaches toward the development of TMDLs, the State's use of innovative alternatives to the traditional "pounds per day" TMDL, and the concept of effluent trading. Additional guidance concerning these concepts can be found in EPA documents which discuss the TMDL process and the water management approach.

Comment ID: CTRH-002-011d
Comment Author: Lisa Ohlund
Document Type: Public Hearing
State of Origin: CA
Represented Org: Alliance of So. CA POTWs
Document Date: 09/18/97
Subject Matter Code: K-01 TMDLs
References:
Attachments? N
CROSS REFERENCES G-02; G-04; C-22

Comment: Now, I'd briefly like to touch on several issues of importance to SCAP members. In addition, we will be submitting written comments before the close of the public comment period.

I'd like to begin by mentioning our support for several provisions included in the draft CTR, and those include the provision authorizing the use of compliance schedules -- although we don't necessarily agree with the time period -- the expression of metals criteria as dissolved rather than totally recoverable, and discussion in the preamble supporting the use of interim limits in permits, while the total maximum daily loads and other special studies are being performed.

Response to: CTRH-002-011d

EPA appreciates the commenter's support of EPA's preamble discussion concerning the State's use of interim permit limits while TMDLs and other special studies are being completed.

Subject Matter Code: K-02 Watershed Permitting

Comment ID: CTR-090-023a
Comment Author: C&C of SF, Public Utl. Commis.
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-02 Watershed Permitting
References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES Q

Comment: An Alternative Strategy to Implement the CTR - The CTR will likely result in massive public and private expenditures without yielding measurable or significant environmental benefits. Costs can be significantly reduced with regulatory flexibility and the cost analysis assumes that regulatory relief will be forthcoming when costs become excessive. However, nothing in the preamble nor anything in the State's implementation plan indicates a willingness to provide regulatory relief. On the contrary, the draft rule establishes an unusually cumbersome variance procedure while theState's draft proposal sets out very conservative procedures for WQBELs and waste load allocations (WLAs).

For these reasons, we recommend a go slow approach to both promulgating and implementing the CTR for those toxicants where the best evidence indicates that non-permitted sources are the predominant sources. This approach would:

1. Use the concept of temporary standards based on liberal assumptions such as use of a CRF of 10E-4 or 10E-4.5 until such time that a) problems in tissue concentrations are established; and b) loadings are established within the watershed. 2. Require permitted sources, including storm water sources to thoroughly characterize their discharges for the watershed specific problem contaminants. 3. Require permitted sources including storm water that discharge nontrivial amounts of problem toxicants to participate in or financially support ambient monitoring programs. 4. Require permitted sources including storm water sources, to undertake all reasonable source control efforts for any problem toxicants in their discharge.

The above efforts will continue through the development of Watershed based control measures, including TMDLs where required. For complex watershed the TMDL process could be lengthy, up to 10 years or more.

Such approaches were discussed in the preamble of the Great Lakes Initiative (589 FR 72, April 16, 1993), and are further discussed in a September 10, 1997 EPA HQ draft memorandum "A Watershed Approach for the Achievement of Water Quality Objectives." (Attachment 1) The temporary limits approach would also obviate the massive administrative burdens contained in the proposed variance procedures.

Response to: CTR-090-023a

EPA disagrees with the comment that the CTR will likely result in massive public and private expenditures without yielding significant environmental benefits. The CTR establishes water quality criteria for priority toxic pollutants; these criteria, combined with State adopted beneficial uses, will

create badly needed ambient water quality standards for California's surface waters including fresh and estuarine waters. The State then must implement these standards into its various water quality control programs, including the Federally mandated NPDES permit program. EPA agrees with the comment that costs of implementation of water quality standards into the NPDES permit program may be reduced with more flexible procedures. EPA described several methods in the preamble to the CTR that are available to provide flexibility in the NPDES permit program. EPA does not agree that these methods are cumbersome. The variance procedure outlined in the preamble may be considered somewhat complex, but the procedure does provide relief to those who are willing to undertake the analyses to show its applicability to a particular situation.

EPA appreciates the detailed comment concerning an alternative strategy for implementing CTR-based water quality standards in California. However, the State has the responsibility of implementing the CTR-based standards. Thus, the alternative implementation concepts described in the comment should be considered by the State in its adoption of the statewide implementation plan. For example, the commenter suggests that temporary standards based on liberal assumptions be used until loadings are established in the watershed; that permitted sources thoroughly characterize their discharges for specific problem contaminants; that permitted sources of problem pollutants participate or financially support ambient monitoring programs, and undertake source control efforts. The commenter's suggestions should be considered by the State in its implementation of water quality standards programs.

Subject Matter Code: K-03 Watershed/Effluent Trading

Comment ID: CTR-035-032b
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-03 Watershed/Effluent Trading
References:
Attachments? N
CROSS REFERENCES K-01

Comment: pp. 42184-42185 -- Total Maximum Daily Loads (TMDLs) We agree with EPA's statements in the Preamble in support of the recommendations of the Permitting and Compliance Issues Task Force regarding the benefits of collaborative approaches to developing TMDLs. We also endorse the State's and EPA's policy to allow innovative alternatives to traditional "pounds per day" TMDLs, and suggest that EPA expand this reference in the Preamble to include the concept of "quantifiable targets," under which TMDLs could be expressed as a mass loading, a concentration, a percent reduction, an ecosystem improvement, or a degree of implementation of a control measure (such as a best management practice) (see SWRCB, 1995, Part VI).

EPA also encourages the use of innovative approaches such as effluent trading, within the TMDL framework. While we support the concept of effluent trading, we do have concerns about how EPA intends for it to be implemented. For instance, in comments submitted to EPA on September 6, 1996 on EPA's Draft Framework for Watershed-Based Trading (May 1996), we pointed out that the proposed framework was overly prescriptive and, as a result, would likely significantly restrict watershed-based trading in California. A few of the barriers to trading we identified in the draft framework include: provisions limiting the duration of trades to the five year term of NPDES permits; limitations on the effect of trades on existing effluent limits, compliance schedules or enforcement actions; discouragement of trading for toxic pollutants; and inequitable requirements for point sources to demonstrate a "reasonable assurance" that a trade will be successful. We recommend that EPA include language in the Preamble to the CTR emphasizing a flexible approach to both TMDLs and effluent trading; that trading is voluntary for all involved parties; and that interim limits will be placed in NPDES permits while the necessary ambient data arc gathered and analytical tools are developed.

Response to: CTR-035-032b

This comment was fully answered under CTR-035-032a.

Comment ID: CTR-061-016
Comment Author: G. Fred Lee & Associates
Document Type: Academia
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: K-03 Watershed/Effluent Trading
References:

Attachments? Y
CROSS REFERENCES

Comment: Page 42185, second column, first paragraph, discusses effluent trading issues. It is important in effluent trading to properly incorporate aquatic chemistry and toxicology into developing the trade arrangements. This issue is discussed in papers on my web site.

Response to: CTR-061-016

EPA agrees with the comment that it is important in effluent trading to properly incorporate aquatic chemistry and toxicology in developing trade arrangements. EPA, in its Draft Framework for Watershed-Based Trading (USEPA, May 1996), states that pollutant chemistry must be reviewed before appropriate trading arrangements can be completed. EPA contemplates that such analyses will be conducted before the State approves any effluent trading arrangements.

Comment ID: CTR-086-004f
Comment Author: EOA, Inc.
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org: California Dent
Document Date: 09/26/97
Subject Matter Code: K-03 Watershed/Effluent Trading
References: Letter CTR-086 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES G-01
C-22
G-09
C-24a
C-24
G-04
G-05
G-02

Comment: Regulatory Flexibility and Relief

CDA supports language in the CTR Preamble that references and endorses recommendations of the State Task Forces including in part the use of.

* reasonable potential analyses * dissolved metals criteria * translators * water effects ratios * site specific objectives * innovative TMDL processes such as effluent trading * performance based interim limits * chronic and acute mixing zones, and * compliance schedules in NPDES permits.

Response to: CTR-086-004f

EPA appreciates the commenter's support of EPA's preamble discussion concerning the State's use of innovative TMDL processes including effluent trading.

Comment ID: CTRH-001-057a
Comment Author: Dave Tucker
Document Type: Public Hearing
State of Origin: CA
Represented Org: San Jose Env. Serv. Dept.
Document Date: 09/17/97
Subject Matter Code: K-03 Watershed/Effluent Trading
References:
Attachments? N
CROSS REFERENCES C-24a
G-04
G-07
G-09
C-22
G-05

Comment: Some of the flexibility that the City highly supports is the water effect ratio investigations to adjust statewide criteria to site-specific conditions; the interim limits concept while special studies are being conducted by the dischargers and other entities; a variance procedure to allow dischargers to achieve progress toward effluent limit attainment without violating applicable water quality standards; dissolved criteria for metals to reflect the toxicological conditions; translators to adjust dissolved criteria to total permit limitations; trading programs to attain and maintain water quality; and a mixing zone that reflects true instream pollutant conditions and that protects beneficial uses.

Response to: CTRH-001-057a

EPA appreciates the commenter's support of EPA's preamble discussion concerning the State's use of effluent trading programs to attain and maintain water quality.
